

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2613

Introduced by Assembly Member ~~Saldana~~ *Beall*

February 19, 2010

An act to amend ~~Section~~ *Sections 25845 and 53069.4* of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2613, as amended, ~~Saldana~~ *Beall*. Local government: fines and penalties: assessments.

Existing law authorizes the legislative body of a local agency to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, as specified.

This bill would authorize a local agency to, after notice and public hearing, specially assess any fines or penalties not paid after demand by the local agency against real property owned by the person owing those fines or penalties. The bill would provide that the assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes, and would authorize the local agency to record a lien against the property. *This bill would authorize a local agency to appoint a hearing officer to hear and decide issues regarding ordinance violations and the imposition of administrative fines and penalties.*

Existing law authorizes a board of supervisors to delegate its powers and duties to establish a nuisance abatement procedure to a hearing officer appointed pursuant to specific statutory requirements regarding a county office of county hearing officer.

This bill would authorize a board of supervisors, with respect to nuisance abatement procedures, to appoint a hearing officer without complying with existing statutory requirements regarding county hearing officer.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25845 of the Government Code is
2 amended to read:

3 25845. (a) The board of supervisors, by ordinance, may
4 establish a procedure for the abatement of a nuisance. The
5 ordinance shall, at a minimum, provide that the owner of the parcel,
6 and anyone known to the board of supervisors to be in possession
7 of the parcel, be given notice of the abatement proceeding and an
8 opportunity to appear before the board of supervisors and be heard
9 prior to the abatement of the nuisance by the county. However,
10 nothing in this section prohibits the summary abatement of a
11 nuisance upon order of the board of supervisors, or upon order of
12 any other county officer authorized by law to summarily abate
13 nuisances, if the board or officer determines that the nuisance
14 constitutes an immediate threat to public health or safety.

15 (b) In any action to abate a nuisance, whether by administrative
16 proceedings, judicial proceedings, or summary abatement, the
17 owner of the parcel upon which the nuisance is found to exist shall
18 be liable for all costs of abatement incurred by the county,
19 including, but not limited to, administrative costs, and any and all
20 costs incurred in the physical abatement of the nuisance. Recovery
21 of costs pursuant to this section shall be in addition to and shall
22 not limit any prevailing party’s right to recover costs pursuant to
23 Sections 1032 and 1033.5 of the Code of Civil Procedure or any
24 other provision of law.

25 (c) A county may, by ordinance, provide for the recovery of
26 ~~attorneys’~~ attorney’s fees in any action, administrative proceeding,
27 or special proceeding to abate a nuisance. If the ordinance provides
28 for the recovery of ~~attorneys’~~ attorney’s fees, it shall provide for
29 recovery of ~~attorneys’~~ attorney’s fees by the prevailing party, rather
30 than limiting recovery of ~~attorneys’~~ attorney’s fees to the county
31 if it prevails. The ordinance may limit recovery of ~~attorneys’~~

1 *attorney's* fees by the prevailing party to those individual actions
2 or proceedings in which the county elects, at the initiation of that
3 individual action or proceeding, to seek recovery of its own
4 ~~attorneys'~~ *attorney's* fees. In no action, administrative proceeding,
5 or special proceeding shall an award of ~~attorneys'~~ *attorney's* fees
6 to a prevailing party exceed the amount of reasonable ~~attorneys'~~
7 *attorney's* fees incurred by the county in the action or proceeding.

8 (d) If the owner fails to pay the costs of the abatement upon
9 demand by the county, the board of supervisors may order the cost
10 of the abatement to be specially assessed against the parcel. The
11 assessment may be collected at the same time and in the same
12 manner as ordinary county taxes are collected, and shall be subject
13 to the same penalties and the same procedure and sale in case of
14 delinquency as are provided for ordinary county taxes. All laws
15 applicable to the levy, collection, and enforcement of county taxes
16 are applicable to the special assessment.

17 (e) If the board of supervisors specially assesses the cost of the
18 abatement against the parcel, the board also may cause a notice of
19 abatement lien to be recorded. The notice shall, at a minimum,
20 identify the record owner or possessor of property, set forth the
21 last known address of the record owner or possessor, set forth the
22 date upon which abatement of the nuisance was ordered by the
23 board of supervisors and the date the abatement was complete,
24 and include a description of the real property subject to the lien
25 and the amount of the abatement cost.

26 (f) However, if the board of supervisors does not cause the
27 recordation of a notice of abatement lien pursuant to subdivision
28 (e), and any real property to which the costs of abatement relates
29 has been transferred or conveyed to a bona fide purchaser for value,
30 or a lien on a bona fide encumbrancer for value has been created
31 and attaches to that property, prior to the date on which the first
32 installment of county taxes would become delinquent, then the
33 cost of abatement shall not result in a lien against that real property
34 but shall be transferred to the unsecured roll for collection.

35 (g) Recordation of a notice of abatement lien pursuant to
36 subdivision (e) has the same effect as recordation of an abstract
37 of a money judgment recorded pursuant to Article 2 (commencing
38 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part
39 2 of the Code of Civil Procedure. The lien created has the same
40 priority as a judgment lien on real property and continues in effect

1 until released. Upon order of the board of supervisors, or any
 2 county officer authorized by the board of supervisors to act on its
 3 behalf, an abatement lien created under this section may be released
 4 or subordinated in the same manner as a judgment lien on real
 5 property may be released or subordinated.

6 (h) The board of supervisors may delegate the hearing required
 7 by subdivision (a), prior to abatement of a public nuisance, to a
 8 hearing board designated by the board of supervisors. The hearing
 9 board shall make a written recommendation to the board of
 10 supervisors. The board of supervisors may adopt the
 11 recommendation without further notice of hearing, or may set the
 12 matter for a de novo hearing before the board of supervisors.

13 (i) ~~The Notwithstanding Chapter 14 (commencing with Section~~
 14 ~~27720) of Part 3 of Division 1 of Title 3, the board of supervisors~~
 15 ~~may, by ordinance, delegate the powers and duties specified by~~
 16 ~~this section to a one or more hearing officer appointed pursuant~~
 17 ~~to Section 27720 the powers and duties specified by this section.~~
 18 ~~officers.~~

19 **SECTION 1.**

20 **SEC. 2.** Section 53069.4 of the Government Code is amended
 21 to read:

22 53069.4. (a) (1) The legislative body of a local agency, as the
 23 term “local agency” is defined in Section 54951, may by ordinance
 24 make any violation of any ordinance enacted by the local agency
 25 subject to an administrative fine or penalty. The local agency shall
 26 set forth by ordinance the administrative procedures that shall
 27 govern the imposition, enforcement, collection, and administrative
 28 review by the local agency of those administrative fines or
 29 penalties. Where the violation would otherwise be an infraction,
 30 the administrative fine or penalty shall not exceed the maximum
 31 fine or penalty amounts for infractions set forth in subdivision (b)
 32 of Section 25132 and subdivision (b) of Section 36900.

33 (2) (A) The administrative procedures set forth by ordinance
 34 adopted by the local agency pursuant to paragraph (1) shall provide
 35 for a reasonable period of time, as specified in the ordinance, for
 36 a person responsible for a continuing violation to correct or
 37 otherwise remedy the violation prior to the imposition of
 38 administrative fines or penalties, when the violation pertains to
 39 building, plumbing, electrical, or other similar structural or zoning
 40 issues, that do not create an immediate danger to health or safety.

1 (B) Notwithstanding Chapter 14 (commencing with Section
2 27720) of Part 3 of Division 1 of Title 3, the administrative
3 procedures adopted by ordinance pursuant to paragraph (1) may
4 authorize the appointment of one or more hearing officers to hear
5 and decide issues regarding ordinance violations and the
6 imposition of administrative fines or penalties.

7 (C) A local agency may, by ordinance, combine the
8 administrative procedures adopted pursuant to paragraph (1) with
9 nuisance abatement procedures adopted by ordinance pursuant
10 to Section 25845.

11 (3) (A) If the owner of real property fails to pay the fines or
12 penalties upon demand by the local agency, the local agency may,
13 after notice and public hearing, order the fines or penalties to be
14 specially assessed against the parcel. The assessment may be
15 collected at the same time and in the same manner as ordinary
16 county taxes are collected, and shall be subject to the same
17 penalties and the same procedure and sale in case of delinquency
18 as are provided for ordinary county taxes. All laws applicable to
19 the levy, collection, and enforcement of county taxes are applicable
20 to the special assessment.

21 (B) If the local agency specially assesses the cost of the
22 abatement against the parcel, the agency also may cause a notice
23 of abatement lien to be recorded. The notice shall, at a minimum,
24 identify the record owner or possessor of property, set forth the
25 last known address of the record owner or possessor, set forth the
26 date upon which assessment was ordered by the local agency, and
27 include a description of the real property subject to the lien and
28 the amount of the lien.

29 (C) If the local agency does not cause the recordation of a notice
30 of lien pursuant to subdivision (B), and any real property on which
31 the assessment has been imposed has been transferred or conveyed
32 to a bona fide purchaser for value, or a lien on a bona fide
33 encumbrancer for value has been created and attaches to that
34 property, prior to the date on which the first installment of county
35 taxes would become delinquent, then the assessment shall not
36 result in a lien against that real property but shall be transferred to
37 the unsecured roll for collection.

38 (D) Recordation of a notice of abatement lien pursuant to
39 subparagraph (B) has the same effect as recordation of an abstract
40 of a money judgment recorded pursuant to Article 2 (commencing

1 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part
2 2 of the Code of Civil Procedure. The lien created has the same
3 priority as a judgment lien on real property and continues in effect
4 until released. Upon order of the local agency, or any officer
5 authorized by the local agency to act on its behalf, an abatement
6 lien created under this section may be released or subordinated in
7 the same manner as a judgment lien on real property may be
8 released or subordinated.

9 (b) (1) Notwithstanding the provisions of Section 1094.5 or
10 1094.6 of the Code of Civil Procedure, within 20 days after service
11 of the final administrative order or decision of the local agency is
12 made pursuant to an ordinance enacted in accordance with this
13 section regarding the imposition, enforcement or collection of the
14 administrative fines or penalties, a person contesting that final
15 administrative order or decision may seek review by filing an
16 appeal to be heard by the superior court, where the same shall be
17 heard de novo, except that the contents of the local agency's file
18 in the case shall be received in evidence. A proceeding under this
19 subdivision is a limited civil case. A copy of the document or
20 instrument of the local agency providing notice of the violation
21 and imposition of the administrative fine or penalty shall be
22 admitted into evidence as prima facie evidence of the facts stated
23 therein. A copy of the notice of appeal shall be served in person
24 or by first-class mail upon the local agency by the contestant.

25 (2) The fee for filing the notice of appeal shall be as specified
26 in Section 70615. The court shall request that the local agency's
27 file on the case be forwarded to the court, to be received within
28 15 days of the request. The court shall retain the fee specified in
29 Section 70615 regardless of the outcome of the appeal. If the court
30 finds in favor of the contestant, the amount of the fee shall be
31 reimbursed to the contestant by the local agency. Any deposit of
32 the fine or penalty shall be refunded by the local agency in
33 accordance with the judgment of the court.

34 (3) The conduct of the appeal under this section is a subordinate
35 judicial duty that may be performed by traffic trial commissioners
36 and other subordinate judicial officials at the direction of the
37 presiding judge of the court.

38 (c) If no notice of appeal of the local agency's final
39 administrative order or decision is filed within the period set forth
40 in this section, the order or decision shall be deemed confirmed.

1 (d) If the fine or penalty has not been deposited and the decision
2 of the court is against the contestant, the local agency may proceed
3 to collect the penalty pursuant to the procedures set forth in its
4 ordinance.

O